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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

UNITED STATES OF AMERICA,

Case No.

Plaintiff,

CONSENT DECREE

v.

THE STATE OF OREGON, acting by and
through its Department of Environmental
Quality,

Plaintiff-Intervenor,

v.

TRUAX OIL, INC.,

Defendant.

I. Background

1. The United States of America ("United States"), by the Attorney General, on behalf of the United States Environmental Protection Agency ("EPA"), has previously filed a complaint ("Complaint") against Truax Oil, Inc. ("Defendant" or "Truax") in this Court alleging that the Defendant is liable to the United States under Sections 301(a) and 311(b)(3) of the Clean Water Act ("the Act"), 33 U.S.C. §§ 1311(a) and 1321(b)(3), for a discharge of diesel and gasoline ("Discharge") that occurred on March 11, 2006. The Complaint alleges that the Discharge occurred when a tanker truck and trailer owned and operated by Defendant rolled over while traveling south near Milepost 118 on U.S. Highway 5, near Roseburg, Oregon. The Complaint further alleges that as a result of the Discharge, approximately 11,000 gallons (262 barrels) of diesel and gasoline were released to the environment, including an unnamed tributary to Roberts Creek, which is a tributary of the South Fork of the Umpqua River, and its adjoining shoreline. The United States seeks civil penalties from the Defendant pursuant to Section 311(b)(7) of the Act, 33 U.S.C. § 1321 (b)(7), for causing the Discharge.

2. The State of Oregon ("State") has intervened in this action as a plaintiff. The State exercises authority over its water resources and has enacted statutory provisions prohibiting the entry of oil into waters of the State and holding any person owning or having control over oil that enters the waters of the State in violation of this prohibition strictly liable for the violation. Or. Rev. Stat. §§ 468B.305 and 468B.310. The State alleges that Truax's Discharge violated Oregon's oil discharge prohibition. The State seeks civil penalties under Oregon Revised Statutes, § 468.140(3)(a).

IV. Definitions

7. Unless otherwise expressly provided herein, terms used in this Decree which are defined in the Clean Water Act, shall have the meaning assigned to them in that Act. In addition:

"Act" means the Clean Water Act, 33 U.S.C. § 1251 et seq.

"Day" means a calendar day unless expressly stated to be a working day.

"Decree" means this Consent Decree.

"Defendant" means Truax Oil, Inc.

"Discharge" means the gasoline and diesel discharge that occurred from a Truax owned and operated truck and attached pup trailer on March 11, 2006, near milepost 118 on U.S. Highway 5, near Roseburg, Oregon.

"EPA" means the United States Environmental Protection Agency.

"Fund" means the Oil Spill Liability Trust Fund established pursuant to 26 U.S.C. § 9509.

"Paragraph" shall mean a portion of this Decree identified by an Arabic numeral;

"Parties" means the Plaintiffs and the Defendant.

"Plaintiffs" means the United States and the State.

"State" means the State of Oregon.

"Truax" means Truax Oil, Inc.

"United States" means the United States of America, on behalf of the United States Environmental Protection Agency.

V. Civil Penalties

8. Settlement of Federal Civil Penalties Claim. Within thirty (30) days following entry of this Decree, Truax shall pay to the United States \$117,500 as a civil penalty. Payment to

the United States shall be to the Oil Spill Liability Trust Fund by cashier's check or certified check referencing Case No. [] (D. Oregon) to the following address:

United States Coast Guard-Oil Pollution
RE: No. [case #] (D. Oregon)
P.O. Box 403427
Atlanta, GA 30384-3427

Defendant shall send notice of payment to EPA and the United States Department of Justice ("DOJ") at the addresses listed in Section XIII (Notices). The notice of payment shall identify: (1) the date and amount of money transferred; (2) the name and address of the transferring bank; (3) this case by name; and (4) Case No. [] (D. Oregon).

9. Settlement of State Civil Penalties Claim. Within thirty (30) days following entry of this Decree, Truax shall pay to the State \$20,000 as a civil penalty. Payment shall be made by cashier's check or certified check referencing the "Roberts Creek Oil Discharge" and payable to the "State of Oregon." The check shall be mailed via overnight mail, with notice referring to this action, to:

Business Office, DEQ
811 S.W. Sixth Avenue
Portland, Oregon 97204.

10. Interest. In addition to the stipulated penalties set forth in Section VI (Stipulated Penalties) below, in the event Truax fails to make timely payments of any amounts required under this Decree, including stipulated penalties, Truax shall pay interest on the unpaid balance. Interest for late payments of the federal and State civil penalties, required under Paragraphs 8 and 9, respectively, shall be at the rate specified in 28 U.S.C. § 1961. The interest shall be calculated

from the first day following the final due date for these payments (i.e., 31 days after the entry of the Decree), until the entire outstanding balance has been received.

VI. Stipulated Penalties

11. Failure to Pay Civil Penalties. The Defendant shall pay a stipulated penalty to the United States of one thousand dollars (\$1,000) per day for each day that Defendant fails to make the full payment required in Paragraph 8. Payment of a stipulated penalty for failure to make the payment required under Paragraph 8 shall be in accordance with the payment procedures outlined in Paragraph 8. The Defendant shall pay a stipulated penalty to the State of one thousand dollars (\$1,000) per day for each day that Defendant fails to make the full payment required in Paragraph 9. Payment of a stipulated penalty for failure to make the payment required under Paragraph 9 shall be in accordance with the payment procedures outlined in Paragraph 9.

12. Written Notice of Penalties. The United States or the State may give the Defendant written notification that it has failed to make a payment as required by Paragraphs 8 or 9. Such notice shall describe the noncompliance, and make a demand for the full payment due and payment of the applicable penalties. However, the penalties provided for in Paragraph 11 shall be owed and shall accrue regardless of whether or not the Defendant has been notified of any non-compliance. The Defendant shall pay stipulated penalties within thirty (30) days from the date a written demand for such penalties is mailed.

13. Any stipulated penalty payments shall be accompanied by a reference to this Decree, and be identified as "Stipulated Penalties." Notice of payment of a stipulated penalty shall be provided to the United States and the State in the manner specified in Section XIII (Notices). Stipulated penalties shall begin to accrue interest on the day after payment is due at

the rate specified under 28 U.S.C. § 1961 and shall continue to accrue interest until full payment is made. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Decree.

14. Notwithstanding any other provision of this Section, the United States and/or the State may, in their unreviewable discretion, waive any portion of stipulated penalties or interest to which that party otherwise is entitled that have accrued pursuant to this Decree.

15. Nothing in this Decree shall be construed as prohibiting, altering, or in any way limiting the ability of the United States or the State to seek any other remedies or sanctions available by virtue of Defendant's violation of this Decree or of the statutes and regulations upon which it is based.

VII. Covenant Not to Sue by Plaintiffs

16. United States' Covenant. In consideration of the payments that will be made by Truax under Section V (Civil Penalties) of this Decree, the United States Environmental Protection Agency covenants not to sue or take administrative action against the Defendant pursuant to Sections 309(b) or 311(b)(7) of the Act, 33 U.S.C. §§ 1319(b) and 1321(b)(7), for civil penalties relating to or arising from the Discharge. This covenant not to sue is conditioned upon receipt by the United States and the State of all payments and interest required by Section V (Civil Penalties) and Section VI (Stipulated Penalties) of this Decree.

17. State's Covenant. In consideration of the payment that will be made by Truax under Section V (Civil Penalties) of this Decree, the State covenants not to sue the Defendant pursuant to Or. Rev. Stat. §§ 468B.305, 468B.310 and 468.140(3)(a), for civil penalties relating to or arising from the Discharge. This covenant not to sue is conditioned upon receipt by the

United States and the State of all payments and interest required by Section V (Civil Penalties) and Section VI (Stipulated Penalties) of this Decree.

VIII. Covenant Not to Present Claims to the Oil Spill Liability Trust Fund

18. Defendant and the State covenant not to make any claims against the Oil Spill Liability Trust Fund relating to or arising from the Discharge.

IX. Reservation of Rights

19. Notwithstanding any other provision of this Decree, the United States and the State reserve, and this Decree is without prejudice to, all rights against the Defendant with respect to all matters other than those expressly specified in the covenants not to sue set forth in Paragraphs 16 and 17 above. Additionally, notwithstanding any other provision of this Consent Decree, the United States Coast Guard reserves its rights to seek reimbursement of all monies expended from the Oil Spill Liability Trust Fund.

X. Covenant by the Defendant

20. In addition to the covenant set forth at Section VIII hereof, Defendant hereby covenants not to sue and agrees not to assert any claims or causes of action against the United States (including all employees, agents, contractors, departments, agencies, administrations and bureaus thereof) or the State (including all employees, agents, contractors, departments, agencies, administrations and bureaus thereof) related to the Discharge.

XI. Effect of Settlement

21. Nothing in this Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Decree. Each of the Parties expressly reserves any and all rights (including, but not limited to, any right of contribution), defenses, claims,

demands, and causes of action which each Party may have with respect to the Discharge against any person not a Party hereto.

22. In any subsequent administrative or judicial proceeding initiated by the United States or the State for injunctive relief, recovery of costs, or other appropriate relief relating to the Discharge, the Defendant shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, the entire controversy doctrine, or other defenses based upon any contention that the claims raised by the United States or the State in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in Section VII (Covenant Not To Sue by Plaintiffs) or Section X (Covenant by the Defendant).

XII. Modification

23. Material Modifications. Material modifications to the Decree may be made only by written agreement of the Parties and the approval of the Court.

24. Non-Material Modifications. Non-material modifications of the Decree may be made only by written agreement of the Parties, and will become effective upon their filing with the Court.

XIII. Notices

25. Whenever under the terms of this Decree notice is required to be given by one Party to another, it shall be directed to the following individuals at the addresses and facsimile numbers specified below, unless it is otherwise specifically provided in this Decree. Any change in the individuals designated by any Party must be made in writing to the other Parties. Any

correspondence submitted to the Plaintiffs shall include a reference to the case caption and civil action number of this Decree. All notices shall be sent by first-class mail and facsimile. As to the United States:

Chief, Environmental Enforcement Section
Environment & Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044-7611
Fax: (202) 514-0097

Stephanie Mairs
Assistant Regional Counsel
U.S. Environmental Protection Agency
1200 Sixth Avenue, Suite 900
ORC-158
Seattle, WA 98101
Fax: (206)-553-0163

Frederick S. Phillips
Trial Attorney
Environment & Natural Resources Division
Environmental Enforcement Section
P.O. Box 7611
Ben Franklin Station
Washington, DC 20044-7611
Fax: (202) 514-0097

As to the State:
Jane K. Hickman, Administrator
Office of Compliance and Enforcement, DEQ
811 S.W. Sixth Avenue,
Portland, Oregon 97204

As to Truax:

Suzanne Lacampagne
Miller Nash LLP
3400 U.S. Bancorp Tower
111 S.W. Fifth Ave.
Portland, OR 97204
Fax: (503) 224-0155

XIV. Retention of Jurisdiction

26. This Court retains jurisdiction over both the subject matter of this Decree and the Parties for the duration of the performance of the terms and provisions of this Decree for the purpose of enabling any of the Parties to apply to the Court for such further order, direction, and relief as may be necessary or appropriate to enforce compliance with its terms or to enable all of the Parties to apply to the Court for the material modification of this Decree.

XV. Lodging and Opportunity for Public Comment

27. This proposed Decree shall be lodged with the Court for a period of thirty (30) days from date of lodging for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw its consent if the comments regarding the Decree disclose facts or considerations which indicate that the Decree is inappropriate, improper or inadequate. The Defendant consents to the entry of this Decree without any reservation.

28. If for any reason the United States withdraws its consent pursuant to Paragraph 27, or if the Court should decline to approve this Decree in the form presented, this agreement is voidable at the sole discretion of any Party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XVI. Final Judgment

29. Upon approval and entry of this Decree by the Court, this Decree shall constitute a final judgment between and among the United States, the State and the Defendant.

XVII. Effective Date

30. The effective date of this Decree shall be the date this Decree is entered by the Court.

XVIII. Costs and Attorneys Fees

31. If the Settling Defendant fails to make any payment required under Section V (Civil Penalties) or Section VI (Stipulated Penalties) of this Decree when due, and the United States and/or the State file(s) with the Court a motion to enforce this Decree or any other application for such payment, and: (1) the United States and/or the State thereafter receives a payment; (2) an order is issued directing payment of any portion of the amount sought by the United States and/or the State; or (3) the action is settled in a manner in which the United States and/or the State receives any portion of the amount sought, the Settling Defendant shall reimburse the United States and/or the State for all costs arising from such motion, complaint or application, including but not limited to costs of attorney time.

32. The United States and the State will use best efforts to coordinate any action(s) to enforce this Decree.

33. The Defendant is entitled to assert any arguments or defenses, claims or counterclaims, available to it by law in an effort to mitigate such costs or fees.

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XIX. Signatories/Service

34. The undersigned representatives of the Parties certify that they are fully authorized to enter into the terms and conditions of this Decree and to execute and legally bind such parties to this document.

35. The Defendant hereby agrees not to oppose entry of this Decree by this Court or to challenge any provision of this Decree.

36. The Defendant shall identify on the attached signature page the name, address, telephone number and facsimile number of an agent who is authorized to accept service of process, if served by both mail and facsimile, on behalf of such Defendant with respect to all matters arising under or relating to this Decree. The Defendant hereby agrees to accept service in this manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including, but not limited to, service of a summons.

IT IS SO ORDERED THIS _____ DAY OF _____, 2008.

UNITED STATES DISTRICT COURT JUDGE

SUBMITTED BY:

NEIL J. EVANS
Assistant United States Attorney
Mark O. Hatfield U.S. Courthouse
1000 SW Third Avenue Suite 600
Portland, OR 97204
(503) 727-1053
Attorney for Plaintiff United States of America

THE UNDERSIGNED PARTY enters in to this Decree in the matter of *United States v. Truax Oil, Inc.*, relating to the Roberts Creek Discharge.

FOR THE UNITED STATES:

ELLEN M. MAHAN
Deputy Chief
Environmental Enforcement Section
U.S. Department of Justice
Box 7611, Ben Franklin Station
Washington, D.C. 20044-7611

FREDERICK S. PHILLIPS
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
202-305-0439

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY:

EDWARD J. KOWALSKI
Regional Counsel
USEPA Region 10
ORC-158, Suite 900
1200 Sixth Avenue
Seattle, WA 98101
206-553-6695

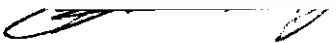
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FOR THE UNITED STATES:

ELLEN M. MAHAN
Deputy Chief
Environmental Enforcement Section
U.S. Department of Justice
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FREDERICK S. PHILLIPS
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FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY:



EDWARD J. KOWALSKI
Regional Counsel
USEPA Region 10
ORC-158, Suite 900
1200 Sixth Avenue
Seattle, WA 98101
206-553-6695

THE UNDERSIGNED PARTY enters in to this Decree in the matter of *United States v. Truax Oil, Inc.*, relating to the Roberts Creek Discharge.

FOR THE STATE OF OREGON:

Joy Hammond, Interim Deputy Director
Oregon Department of Environmental Quality
811 S.W. Sixth Avenue,
Portland, Oregon 97204.

Daniel H. Rosenhouse OSB#773275
Assistant Attorney General
1515 SW Fifth Avenue, Suite 410
Portland, OR 97201

THE UNDERSIGNED PARTY enters in to this Decree in the matter of *United States v. Truax Oil, Inc.*, relating to the Roberts Creek Discharge.

FOR TRUAX OIL, INC.:

Signature

Print Name:

JOHN TRUAX

Title:

Pres.

Address:

4221 SW RESEARCH WAY
CORVALLIS OR.
97333